IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10390 of 1998

For Approval and Signature:

HON'BLE MR.JUSTICE D.N.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHARTENDRASINH JAYENDRASINH PARMAR

Versus

ADDITIONAL REGISTRAR (APPEALS)CO OP SOCIETIES

Appearance:

1. Special Civil Application No. 10390 of 1998

MR NV SOLANKI for Petitioner No. 1

MS. ARCHANA RAVAL, AGP for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE D.N.PATEL

Date of decision: 05/05/2004

ORAL JUDGEMENT

1. The petitioner has preferred the present petition under Articles 227 of the Constitution of India and has

challenged the order dated 8th October, 1998 passed by the Additional Registrar (Appeals), Cooperative Societies, Gujarat State in Revision Application No. 14 of 1998, whereby the petitioner was removed from the membership of 'Anand Gadh Samudayik Kheti Sahakari Mandali Ltd. (hereinafter referred as "the society" for the sake of brevity and convenience).

2. It is contended by the learned advocate appearing for the petitioner that the petitioner had become member of the society from 1992. The society has not passed any resolution or has not taken any decision for removing the petitioner from its membership. First time in the year 1997 the notice dated 20th October, 1997 was issued by the District Registrar, Cooperative Societies, Surendranagar to the petitioner as to why he should not be removed from the membership of the society u/s 23 of the Gujarat Cooperative Societies Act, 1961 (hereinafter referred to as "the Act, 1961" for short) as he was not residing within the radius of five miles from the place of the society. Pursuant to the said show cause notice, the petitioner was heard and the order was passed by the District Registrar, Cooperative Societies, Surendranagar on 16th January,1998, whereby the petitioner was removed from the membership of the society. The copy of the said order is annexed at Annexure-F to the memo of the petition.

3. It is also contended by the learned advocate for the petitioner that Review Application No. 986 of 1998 was preferred by the petitioner before the same authority presenting additional evidence as to the copy of the ration card and proof as to inclusion of his name in the voters' list. The said review application was not decided and therefore Revision Application No. 14 of 1998 was filed by the petitioner u/s 155 of the Act, 1961 before the Additional Registrar (Appeals), Cooperative Societies, Gujarat State, Gandhinagar, which was dismissed vide order dated 8th October, 1998 and thereby the order dated 16th January, passed by the District Registrar, Cooperative Societies, Surendranagar was confirmed and the petitioner was removed from the membership of the society.

4. It is contended by the learned advocate for the petitioner that the evidence produced before the aforesaid authorities have not been properly appreciated and two important documents were rejected merely on the ground of non-production of the same before the District Registrar, Cooperative Societies, Surendranagar. Thus, even the revisional authority has not applied its mind

towards the additional evidence and therefore the orders passed by the authorities below are illegal and erroneous and the same deserve to be quashed. It is also contended by the learned advocate for the petitioner that even the order passed by the District Registrar, Cooperative Societies u/s 23 of the Act is illegal and erroneous because no declaration as envisaged u/s 23 of the Act has ever been given by the petitioner and no question it being false arises and unless and until the declaration proves to be false the power u/s 23 of the Act, 1961 cannot be exercised by the District Registrar, Cooperative Societies, Surendranagar. Similarly, the learned advocate for the petitioner has drawn my attention towards Section 22 (2) (c) of the Act which also envisages passing of resolution by the society for removing any member from the society and upon taking decision the Society has to communicate to the District Registrar, Cooperative Societies and upon receipt of the application under Clause (c) of Sub-section 2 of Section 22 of the Act, the District Registrar, Cooperative Societies, should hold inquiry under Clause (d) of Sub-Section - 2 of Section 22 of the Act, 1961 and unless and until this process is being done, the District Registrar, Cooperative Societies, has no power, jurisdiction and authority even to issue notice for removal of the petitioner from the membership of the society.

5. Learned Assistant Government Pleader appearing for the respondents submitted that the District Registrar, Cooperative Societies, has not given any opportunity to the petitioner u/s 23 of the Act for production of the proof, if any, the petitioner having for proving the fact that he was residing within working field of the petitioner society which is within the radius of 5 miles of Anand Gadh village. The opportunity of personal hearing was given to the petitioner. The petitioner had produced documentary evidence and therefore the order passed by the District Registrar, Cooperative Societies on 16th January,1996 is legal, valid and proper and subsequent oppose made by the petitioner cannot be considered. Once the petitioner has already been given the opportunity of hearing, the order passed by the revisional authority on 8th October, 1998 also cannot be said illegal, invalid and improper. There is no error apparent on the face of the record in the order of the revisional authority and therefore the petition deserves to be dismissed.

I have gone through the facts and circumstances of the case, the orders passed by the authorities below,

and the evidence produced in the petition which was also produced before the District Registrar, Cooperative Societies by the petitioner as to proof of his residence within radius of 5 miles of village Anand Gadh.

6. The petitioner has produced the documentary evidence namely :

i. The petitioner is resident of Muli Gram Panchayat and to that effect the certificate has been issued by Muli Gram Panchayat;

ii. Certificate issued by the Social Justice Committee;

iii. Copy of the ration card, and

iv. Certificate as to inclusion of the name of the petitioner in the voters' list.

7. The revisional authority has sought for additional proof as to the residence given by the petitioner before the District Registrar, Cooperative Societies, in the revision application on the ground that the petitioner should have produced those documentary evidence produced before the District Registrar, Cooperative Societies and first available opportunity. Looking to the nature of the documents, the petitioner deserves to be heard a fresh by the District Registrar, Cooperative Societies and the additional proof produced by the petitioner at the time of Review Application which has not been considered by the authorities below, ought to have been considered and the petitioner ought to have been given afresh opportunity of being heard.

8. The provision of Section 23 (1) and (2) of the Act envisage that whenever there is a false declaration made by the petitioner and such declaration has been given to the petitioner with the show cause notice that the petitioner may have full opportunity to meet with these allegations, then only the power can be exercised u/s 23 of the Act. Section 23 (1) and (2) of the Act reads as under :

"Sec.23 - Removal from membership in certain circumstances :

(1) Where a person becomes a member of any society on his making a declaration as required by the bye-laws of the society

or otherwise and such declaration is bound to be false, then such person shall be disqualified to continue as a member of the society.

(2) Where a person continues as a member of the society notwithstanding the disqualification incurred by him [under sub-section (3) of Section-22 or under sub-section (1)], he shall be removed from the society by the Registrar:

Provided that the Registrar shall, before making an order of removal give the person an opportunity of being heard."

9. No such averment has been made in the notice issued by the District Registrar, Cooperative Societies as to which declaration was found to be false. Falsehood nature of the declaration has no logic for exercise of the powers under Section 23 of the Act by the authorities below. But unless and until the notice is given to the petitioner to meet with the allegation as to false declaration, the powers cannot be exercised by the District Registrar, Cooperative Societies. Similarly, u/s 22 (2) (c) and (d) of the Act, the society ought to have formed an opinion as to qualification of its own members and thereafter they can move an application to the District Registrar and upon receipt of application u/s 22 (2) (c) of the Act and he can exercise the powers u/s 22 (2) (c) and 22 (2) (d) of the Act, which read, as under :

"22 (2) (c) : Where the society is of the opinion that such person is not qualified for being member of the society or that he may not be continued as its member, such society may, within a period of three months from the date of receipt of his application for admission under clause (a), or, as the case may be clause (b), move the Registrar by an application in writing stating all grounds in support thereof, for a declaration that such person shall cease to be its member with effect from such date as may be specified by the Registrar, in such declaration.

22 (2) (d) : On receipt of the application under clause (c), the Registrar shall after making such inquiry as he thinks fit and for reasons to be recorded in writing make an order either rejecting the application of the society or

accepting the application of the society and declaring that such person shall cease to be its member with effect from such date as may be specified in such order:

Provided that no order accepting the application of the society and making a declaration as aforesaid shall be made by the Registrar under this clause unless an opportunity of being heard is given to the person concerned."

10. As it is evident from the notice at Annexure-C to the memo of the petition issued by the District Registrar, Cooperative Societies, neither of the ingredients are present which are referred in Sections 22 and 23 of the Act, 1961 namely (i) the resolution passed by the society and (ii) falsehood nature of the declaration given by the petitioner and therefore the orders passed by the District Registrar, Cooperative Societies and revisional authority are illegal, erroneous and bad in law. The case of the petitioner is supported and covered by the judgment of this Court Vikrambhai Dhirajbhai Patel V. A.S. Jog, District Registrar, Coop. Societies, Mehsana & Anr., reported in 1989 (1) G.L.R. 690. In the said reported case also, it was not pointed out as to falsehood nature of declaration as envisaged in Section 23 of the Act and hence the orders passed by the authorities below were quashed and the petition was allowed. The facts of the present case are alike and therefore the orders passed by the authorities below namely the District Registrar, Cooperative Societies and the Revisional Authorities - Additional Registrar (Appeals), Gujarat State, on 16th August, 1998 and 8th October, 1998 are quashed and set aside. Accordingly, this petition is allowed. Rule is made absolute, with no order as to costs.

(D.N. Patel, J.)

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